

EXHIBIT B

1 The Retirees' Committee and others make a big deal of
2 the fresh start principle, and Mr. Kirpalani has already
3 addressed that issue. I want to amplify it with the closing
4 remark of Mr. Yanez. He said any transfer might be undone.
5 You're putting the legislature in a position where any transfer
6 might be undone.

7 Your Honor, I've looked through PROMESA fairly
8 carefully, and I can't find the words "fresh start," but I can
9 find the words "access to capital markets" in five places. I
10 can find them in Section 101(a), where it is the first purpose
11 of the Oversight Board, and I can find them in Section 201(a)
12 where it is the first purpose of a fiscal plan, and I can find
13 them in Section 209. It is the last duty of the Oversight
14 Board, to obtain access to the capital markets.

15 Your Honor, when you fly to Puerto Rico, you land at
16 Luis Munoz Marin International Airport. That was sold. That
17 was a transfer. Revenues from that airport, those were
18 available revenues. I realize that's a thing, and you have
19 already asked what the difference is between a thing and an
20 inchoate stream of taxes. Given practice in other states, I
21 don't think there is a difference, and I don't see why there is
22 any federal common law principle that prevents a state
23 legislature or a Commonwealth's legislature from enacting a law
24 to transfer the property. But if you strike down COFINA on the
25 ground that it couldn't happen, you're putting Puerto Rico in a

1 situation where it will not regain access to the capital
2 markets for probably the professional lifetimes of the people
3 in this court, because nobody's going to lend Puerto Rico money
4 unless it's backed by a stream of revenues that are committed
5 to the repayment of the debt.

6 With that, I reserve the balance of my time.

7 THE COURT: You're reserving it for rebuttal?

8 MR. MAYER: Yes, I reserve for rebuttal, and I may
9 very well yield it back to other members of the COFINA side.

10 Thank you, your Honor.

11 THE COURT: You have two minutes and 45 seconds out
12 there, in the bank.

13 MR. MAYER: Thank you.

14 THE COURT: OK.

15 We now turn to the Commonwealth's interest,
16 Mr. Stancil, for 33 minutes.

17 MR. STANCIL: Yes.

18 Good morning, your Honor, and may it please the Court,
19 my name is Mark Stancil from the firm of Robbins Russell, and I
20 represent the Ad Hoc Group of General Obligation Bondholders.
21 My counsel today are Mr. Luc Despins and James Bliss, from Paul
22 Hastings, and Mr. Rich Levin, from Jenner & Block.

23 With the Court's indulgence, we've divided up the
24 substantive issues to avoid duplication. I'm going to be
25 addressing what we call the core constitutional issue, which

1 is, assuming for the moment that COFINA's creators intended to
2 transfer the pledged sales taxes, did they have the
3 constitutional authority to do so?

4 Mr. Despins will then address the nonconstitutional
5 issue regarding whether Act 91, in fact, transferred ownership
6 of those revenues to COFINA.

7 Time permitting, Mr. Bliss will address the balanced
8 budget clause issue.

9 (Continued on next page)

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1 MR. STANCIL: Mr. Levin will address the fresh start
2 argument and I believe also the civil code issues that he has
3 raised.

4 So, your Honor, if I may, let me begin by restating
5 the constitutional question. I think it's fairly clear from
6 the discussion thus far. Assuming for the moment that the
7 legislature tried to do what the COFINA parties suggest, which
8 is to irrevocably transfer the pledged sales taxes to COFINA,
9 did they have the authority under Puerto Rico's Constitution to
10 do that? The answer is no.

11 Article 6, section 8 gives the constitutional debt,
12 what we often call the GOs, gives them an absolute first claim
13 on all of the Commonwealth's available resources. As the
14 COFINA parties would have it, available resources means
15 whatever resources the legislature deems fit to make available.
16 And that's wrong for three main reasons that I'd like to get to
17 today.

18 First, the COFINA position defies the plain text of
19 the available resources provision and the context in which it
20 appears. I will walk through word by word of the text --

21 THE COURT: I will look forward to that.

22 MR. STANCIL: Thank you, your Honor.

23 Second, their position ignores the founder's stated
24 intent to place the constitutional debt in "absolute first
25 term" over "all of the resources of the government."

1 You didn't hear a thing about the drafting history in
2 my colleague's presentation earlier today, but, again, I will
3 walk through that in detail as well.

4 Third, and certainly not least, their position would
5 eviscerate the interlocking protections in article 6. It
6 attributes a fundamental level of incompetence to the drafters
7 of Puerto Rico's Constitution to suggest that this web of
8 protections for the people of Puerto Rico and constitutional
9 debt holders are evaded with a simple step to the left by
10 saying, whoops, we have transferred these future revenues, and
11 I am going to get into why that would render this entire system
12 effectively meaningless.

13 But, in short, article 6 was supposed to be an
14 absolute commitment to constitutional debt holders. They want
15 to turn it into an option to withhold resources from
16 constitutional debt holders, and it has these careful
17 limitations on the amount of revenue that can be absolutely
18 committed for debt service. They turn that into an unlimited
19 license to commit an unlimited amount of resources irrevocably
20 for an unlimited amount of debt. In short, it turns article 6
21 on its head.

22 I think it's helpful to maybe start by reading the
23 text of article 6, section 8. That's the centerpiece of the
24 entire constitutional scheme. It says: In case the available
25 resources, including surplus, for any fiscal year are

1 insufficient to meet the appropriations paid for that year,
2 interest on the public debt and amortization thereof shall
3 first be paid and other disbursements shall thereafter be made
4 in accordance with the order of priorities established by law.

5 Available resources has meaning under the
6 Constitution. It can't be just assumed away that available
7 means whatever the legislature says. And ultimately both the
8 COFINA agent and the Senior Bondholder Coalition, I believe,
9 everybody would reluctantly concede that the legislature
10 doesn't get you to define the constitutional term available
11 resources. This Court is charged with giving content to that
12 term, as it would any other provision like, what does due
13 process mean? What does a taking amount to?

14 THE COURT: Isn't it a fundamental political function
15 of elected leaders to determine what resources are prioritized
16 resources, determine the appropriate application of resources?
17 Unless you are going to say that this first priority means that
18 any time there is a shortfall everybody on the island
19 necessarily starves, everything has to get shut down, and any
20 money that was ever spent before somehow has to be clawed back
21 and that's what a court can understand. How is the Court in a
22 position to determine whether babies should eat or traffic
23 lights should be on or houses should get to stand up before
24 bondholders get paid? Those are important political
25 distinctions.

1 MR. STANCIL: Your Honor, there are probably three
2 different answers to that.

3 Let me start by first saying under the Constitution,
4 if the Constitution is respected, it will never come to that
5 precisely because of the debt limit, and we will get to that in
6 a minute.

7 Your Honor is exactly right. It would be crazy, would
8 it not, to think that you could give bondholders an unlimited
9 check to come ahead of all other services of the government.
10 But it doesn't follow from that that the bondholders identified
11 in the Constitution do not come ahead of other expenditures.

12 And don't take my word for it. Take the word of the
13 Puerto Rico legislature for 40, 50 years, until two summers ago
14 when we started throwing out statutes. This is a statute. I
15 apologize it is not in our briefs. It's in our complaint. I
16 think this answers your Honor's question correctly. 23
17 L.P.R.A. 104(c) is the statutory order of priorities that is
18 directly referenced in the Constitution. So that addresses
19 your Honor's question, did they really mean to pay
20 constitutional debt before public health, safety, and welfare?
21 Yes, your Honor, they did.

22 If I may, I would read to you a few provisions from
23 104(c). It begins: In keeping with section 8, article 6 of
24 the Constitution in Puerto Rico, the governor shall proceed
25 according to the following priority rules in disbursement of

1 public funds when resources available for a fiscal year are
2 insufficient to cover the appropriations made for that year.
3 1. Payment of interest and amortization related to public
4 debt. 2 -- it's a little wordy. I'll paraphrase. 2.
5 Commitments under legal contracts enforced. Court judgments,
6 binding obligations to safeguard credit. 3. Order that
7 disbursements be made for expenses under the allocations for
8 recurrent expenditure related to (A) the preservation of public
9 health (B) protection of persons and property (C) the public
10 education programs (D) the public welfare programs (E) the
11 payment of employer contributions to retirement systems and
12 pension payments to individuals etc., etc.

13 THE COURT: I as a court should respect that
14 legislatively determined list of priorities because you like
15 that and that's not really offensive and you could sleep at
16 night because babies are going to get fed. But, otherwise, I
17 should ignore anything, any other judgment that the legislature
18 made, and come up with some holistic concept of availability
19 that was in the third branch?

20 MR. STANCIL: No, your Honor. That's not how it
21 works. This is what we would say is absolute clear evidence of
22 what the intent of the founding document means. I want to come
23 back to the premise of your question.

24 THE COURT: This is a statute passed by the
25 legislature.

1 MR. STANCIL: Yes. I will just come back to the first
2 phrase of Section 23 L.P.R.A. 104(c) which says: In keeping
3 with section 8, article 6, here is what we do. They recognize
4 that that's what article 6 means.

5 Your Honor, let me take the premise, which is no one
6 is taking anything out of the mouths of babies because we have
7 a debt limit. And the reason we are here, in large part or in
8 substantial part, is because COFINA was used as an end run
9 around the debt limit and that's why the Commonwealth is facing
10 choices that it should not have to face. If it had been
11 respected, the Constitution had been respected and any
12 commitments made for debt, absolute commitments made for debt
13 were limited to 15 percent of their revenues, we would not be
14 here.

15 THE COURT: But it doesn't say absolute commitments
16 made for debt. It says absolute commitments made for direct
17 obligations of the Commonwealth backed by the full faith and
18 credit of the Commonwealth.

19 And we know from the cases that have been cited all
20 over the place that there are different kinds of state
21 constitutional provisions and there are constitutional
22 provisions that require referenda or put caps on any kind of
23 debt on the state at all. Could have been written that way.
24 Wasn't written that way.

25 MR. STANCIL: Your Honor, I respectfully disagree that

1 available resources is as flexible as COFINA would have it.

2 THE COURT: You said that we wouldn't be in this
3 problem but for violation of the debt limit, and so I think
4 you've necessarily put the import of the debt limit on the
5 table in that last sentence.

6 MR. STANCIL: I apologize. Absolutely. I think that
7 makes a mockery of the debt limit. Let's focus on what the
8 purpose of the debt limit was. So the debt limit implies by
9 its terms the full faith and credit debt because, as I've just
10 described in article 6, section 8, full faith and credit debt
11 gets this absolute first priority. So, of course, you would
12 want to limit the amount of such promise you can make.

13 The fiction of COFINA is that you can evade the
14 central policy objective of the debt limit by transferring
15 future revenues as opposed to merely promising future revenues.
16 It would make a mockery. I think it would sort of ascribe an
17 astonishing level of incompetence to the drafters of the
18 constitutional debt limit to say yes, you are going to hold
19 their feet to the fire and limit them to 15 percent if they are
20 going to make this super full faith and credit promise. We
21 will let you sell revenue before it even gets to the coffers.

22 THE COURT: I think I perceive the COFINA people, and
23 they can tell me if I'm wrong on rebuttal, as saying that it's
24 not the transfer that's the key magic with respect to the debt
25 limit; it's that the COFINA statute not only doesn't say full

1 faith and credit; it says you look to a particular body of
2 revenues, and there is no commitment to use the taxing powers
3 to get something more to replace those revenues that are taken
4 off the table. So the COFINA people seem to focus on it not
5 being full faith and credit and not being a direct obligation.

6 MR. STANCIL: With respect, your Honor, their position
7 is entirely question begging. They say the debt limit doesn't
8 apply because it's not full faith and credit debt, but that
9 skips over the question of whether the transferring in the
10 first instance is consistent with the idea of the debt limit.

11 If we can take a step back. If the Commonwealth
12 had -- grant my premise, which I understand your Honor is
13 testing, but grant my premise that GO debt does have what the
14 Constitution says, an absolute first claim on resources.

15 If we were facing only that, in any given year it
16 would no more than 15 percent of their revenues over the
17 average of the last two years when they issued the debt, but
18 roughly 15 percent of the budget go to debt service. We would
19 be facing --

20 THE COURT: For full faith and credit debt.

21 MR. STANCIL: Yes, your Honor. We would be facing a
22 fraction of the drain on the Commonwealth's resources had they
23 respected that and not done an end run around.

24 Your Honor, if I could explain the way that this makes
25 not just a mockery of section 2 of the debt limit but the rest